

PROPOSED PLAN FOR ENERGY STIMULUS FUNDS Cover Sheet

1) Agency Name and Contact

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2) Agency Office Administering Funds and Contact

Energy and Housing Services Department, Kim Weed, 624-5781, kweed@mainehousing.org

3) I'und Distribution

Not subject to state legislative allocation.

4) Suggested Legislative Committee Reference

Joint Select Committee on Maine's Energy Future

5) Amount Expected and the Fiscal Quarter Expected

We expect to receive \$41,935,015. The Department of Energy will obligate 10% of the funds at the time of the initial award and 40% upon approval of the state plan. Obligation means that the funds are available for use, not that they will be forwarded to us. Normally we are allowed to advance 15% to our sub-grantees, the community action agencies, and then seek reimbursement as funds are needed. The funds must be spent within three years.

6) Summary of Authorized/Expected Use of the Funds

From the Funding Announcement: The purpose of the Weatherization Assistance Program is to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve health and safety. The priority population for the Weatherization Assistance Program is persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential users, and households with high-energy burden.

The Maine program is implemented through the State's ten Community Action Agencies. We estimate that 4,400 households will be served. The initial application is due on March 23rd and the final application is due on May 12th.

7) Federal Law and Rule Citation

42 USC §6861 – 6873; 10 CFR Part 440

8) Federal Agency Contact Information

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PROPOSED PLAN FOR ENERGY STIMULUS FUNDS

March 19, 2009

To: Senator Philip Bartlett, Chair

Representative John Martin, Chair

Joint Select Committee on Maine's Energy Future

From: Dale McCormick, Director

Re: MaineHousing Energy Recovery Funds

Recovery Funds

MaineHousing has received a Funding Opportunity Announcement from the federal Department of Energy (DOE) offering us the opportunity to apply for \$41,935,015 in Weatherization Assistance Program recovery funding. We must make an initial application on March 23, 2009 and a final application on May 12, 2009. We intend to do so.

The Program

Maine has operated a weatherization program since 1978 when we ran the nationwide pilot for DOE. MaineHousing has administered it since 1991. According to the DOE, the purpose of the Weatherization Assistance Program is "to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve health and safety. The priority population for the Weatherization Assistance Program is persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential users, and households with high-energy burden."

The Maine program is implemented through the state's ten Community Action Agencies. We estimate that 4,400 households will be served with these funds. The funds must be used within three years. We will use the existing program infrastructure to deliver the program.

Areas of Limited Discretion

Income Eligibility Level – The law changed the income eligibility level from 150% of poverty to 200% of poverty (\$28,000 for a family of two). The program allows us to use either the DOE level or eligibility under the Low-Income Home Energy Assistance Program (LIHEAP). We currently use the LIHEAP eligibility, which is 200%. We plan to continue this eligibility, so there will be no change in our program.

Average Per Home Spending Limit – The law increased the per home average spending limit from an inflation indexed level (currently \$3,000) to \$6,500. Our actual current spending is about \$4,000 per home because we mix in LIHEAP weatherization funding. We plan to implement this change.

Training and Technical Assistance – The law increases the amount of funding set aside for training and technical assistance from up to 10% of the grant to up to 20% of the grant. This funding is to "maintain or increase the efficiency, quality, and effectiveness of the Weatherization Program at all levels. Such activities should be designed to maximize energy savings, minimize production costs, improve program management and crew/contractor "quality of work" and/or reduce the potential for waste, fraud, abuse, and mismanagement."

These funds are used to support field inspectors, training required by DOE, auditor training, and weatherization technician training. The new funds will be spent on these items and any additional items required to implement the law swiftly. We are discussing the details of these needs with the Community Action Agencies and other stakeholders.

Conclusion

This is a long standing, well-established program with an existing infrastructure that can quickly respond to the purposes of the recovery act. All funds will be used in accordance with federal law, federal rules, and federal guidance received and expected.

- 1 implementation of programs authorized under subtitle E
- 2 of title V of the Energy Independence and Security Act
- 3 of 2007 (42 U.S.C. 17151 et seq.), of which
- 4 \$2,800,000,000 is available through the formula in sub-
- 5 title E: Provided further, That the Secretary may use the
- 6 most recent and accurate population data available to sat-
- 7 isfy the requirements of section 543(b) of the Energy
- 8 Independence and Security Act of 2007: Provided further,
- 9 That the remaining \$400,000,000 shall be awarded on a
- 10 competitive basis: Provided further, That \$5,000,000,000
- 11 shall be for the Weatherization Assistance Program under
- 12 part A of title IV of the Energy Conservation and Produc-
- 13 tion Act (42 U.S.C. 6861 et seq.): Provided further, That
- 14 \$3,400,000,000 shall be for the State Energy Program
- 15 authorized under part D of title III of the Energy Policy
- 16 and Conservation Act (42 U.S.C. 6321): Provided further,
- 17 That \$2,000,000,000 shall be available for grants for the
- 18 manufacturing of advanced batteries and components and
- 19 the Secretary shall provide facility funding awards under
- 20 this section to manufacturers of advanced battery systems
- 21 and vehicle batteries that are produced in the United
- 22 States, including advanced lithium ion batteries, hybrid
- 23 electrical systems, component manufacturers, and soft-
- 24 ware designers: Provided further, That notwithstanding
- 25 section 3304 of title 5, United States Code, and without

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- 1 SEC. 407. WEATHERIZATION ASSISTANCE PROGRAM
- 2 AMENDMENTS. (a) INCOME LEVEL.—Section 412(7) of
- 3 the Energy Conservation and Production Act (42 U.S.C.
- 4 6862(7)) is amended by striking "150 percent" both
- 5 places it appears and inserting "200 percent".
- 6 (b) Assistance Level Per Dwelling Unit.—Sec-
- 7 tion 415(c)(1) of the Energy Conservation and Production
- 8 Act (42 U.S.C. 6865(c)(1)) is amended by striking
- 9 "\$2,500" and inserting "\$6,500".
- 10 (c) Effective Use of Funds.—In providing funds
- 11 made available by this Act for the Weatherization Assist-
- 12 ance Program, the Secretary may encourage States to give
- 13 priority to using such funds for the most cost-effective ef-
- 14 ficiency activities, which may include insulation of attics,
- 15 if, in the Secretary's view, such use of funds would in-
- 16 crease the effectiveness of the program.
- 17 (d) Training and Technical Assistance.—Sec-
- 18 tion 416 of the Energy Conservation and Production Act
- 19 (42 U.S.C. 6866) is amended by striking "10 percent"
- 20 and inserting "up to 20 percent".
- 21 (e) Assistance for Previously Weatherized
- 22 DWELLING UNITS.—Section 415(c)(2) of the Energy Con-
- 23 servation and Production Act (42 U.S.C. 6865(c)(2)) is
- 24 amended by striking "September 30, 1979" and inserting
- 25 "September 30, 1994".



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6861

§ 6861. Congressional findings and purpose

(a) The Congress finds that—

- (1) a fast, cost-effective, and environmentally sound way to prevent future energy shortages in the United States while reducing the Nation's dependence on imported energy supplies, is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units;
- (2) existing efforts to encourage and facilitate such measures are inadequate because—
 - (A) many dwellings owned or occupied by low-income persons are energy inefficient;
 - **(B)** low-income persons can least afford to make the modifications necessary to provide for efficient energy equipment in such dwellings and otherwise to improve the energy efficiency of such dwellings;
- (3) weatherization of such dwellings would lower shelter costs in dwellings owned or occupied by low-income persons as well as save energy and reduce future energy capacity requirements; and
- (4) States, through Community Action Agencies established under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to alleviate the adverse effects of energy costs on such low-income persons, to supplement other Federal programs serving such low-income persons, and to increase energy efficiency.
- **(b)** It is, therefore, the purpose of this part to develop and implement a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, the handicapped, and children.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6862

§ 6862. Definitions

As used in this part:

- (1) The term "Secretary" means the Secretary of Energy.
- (2) The term "Director" means the Director of the Community Services Administration.
- (3) The term "elderly" means any individual who is 60 years of age or older.
- (4) The term "Governor" means the chief executive officer of a State (including the Mayor of the District of Columbia).
- (5) The term "handicapped person" means any individual
 - (A) who is an individual with a disability, as defined in section 705 of title 29,
 - **(B)** who is under a disability as defined in section 1614(a)(3)(A) or 233(d)(1) of the Social Security Act [42 U.S.C. 1382c(a)(3)(A), 423(d)(1)] or in section $102(7)^{[1]}$ of the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], or
 - (C) who is receiving benefits under chapter 11 or 15 of title 38.
- **(6)** The terms "Indian", "Indian tribe", and "tribal organization" have the meanings prescribed for such terms by section 3002 of this title.
- (7) The term "low-income" means that income in relation to family size which
 - (A) is at or below 150 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 2809 (a)(12) of this title,
 - **(B)** is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act [42 U.S.C. 601 et seq., 1381 et seq.] or applicable State or local law, or
 - **(C)** if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least 150 percent of the poverty level determined in accordance with

criteria established by the Director of the Office of Management and Budget.

- (8) The term "State" means each of the States and the District of Columbia.
- (9) The term "weatherization materials" means—
 - (A) caulking and weatherstripping of doors and windows;
 - (B) furnace efficiency modifications, including, but not limited to-
 - (i) replacement burners, furnaces, or boilers or any combination thereof;
 - (ii) devices for minimizing energy loss through heating system, chimney, or venting devices; and
 - (iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;
 - (C) clock thermostats;
 - (D) ceiling, attic, wall, floor, and duct insulation;
 - (E) water heater insulation;
 - **(F)** storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials;
 - **(G)** cooling efficiency modifications, including, but not limited to, replacement air-conditioners, ventilation equipment, screening, window films, and shading devices;
 - (H) solar thermal water heaters;
 - (I) wood-heating appliances; and
 - (3) such other insulating or energy conserving devices or technologies as the Secretary may determine, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director, of the Community Services Administration.

^[1] See References in Text note below.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6863

§ 6863. Weatherization program

(a) Development and conduct of program by

Secretary; grants to States and Indian tribal organizations

The Secretary shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Secretary may, in accordance with this part and regulations promulgated under this part, make grants

- (1) to States, and
- (2) in accordance with the provisions of subsection (d) of this section, to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.
- (b) Consultation by Secretary with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards and procedures; rental units
 - (1) The Secretary, after consultation with the Director, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, and the heads of such other Federal departments and agencies as the Secretary deems appropriate, shall develop and publish in the Federal Register for public comment, not later than 60 days after August 14, 1976, proposed regulations to carry out the provisions of this part. The Secretary shall take into consideration comments submitted regarding such proposed regulations and shall promulgate and publish final regulations for such purpose not later than 90 days after August 14, 1976. The development of regulations under this part shall be fully coordinated with the Director.
 - (2) The regulations promulgated pursuant to this section shall include provisions—
 - (A) prescribing, in coordination with the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, and the Director of the National Institute of Standards and Technology in the Department of Commerce, for use in various climatic, structural, and human need settings, standards for weatherization materials, energy conservation techniques, and balance combinations thereof, which are designed to achieve a balance of a healthful dwelling environment and maximum practicable energy conservation;

- **(B)** that provide guidance to the States in the implementation of this part, including guidance designed to ensure that a State establishes
 - (i) procedures that provide protection under paragraph (5) to tenants paying for energy as a portion of their rent, and
 - (ii) a process for monitoring compliance with its obligations pursuant to this part; and
- **(C)** that secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part.
- (3) The Secretary, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall develop and publish in the Federal Register for public comment, not later than 60 days after November 9, 1978, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—
 - (A) the cost of the weatherization material;
 - (B) variation in climate; and
 - **(C)** the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Secretary in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 1474 (c) of this title, and the Director of the Community Services Administration in carrying out weatherization programs under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809 (a)(12)]. The Secretary shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after November 9, 1978.

- (4) In carrying out paragraphs (2)(A) and (3), the Secretary shall establish the standards and procedures described in such paragraphs so that weatherization efforts being carried out under this part and under programs described in the fourth sentence of paragraph (3) will accomplish uniform results among the States in any area with a similar climatic condition.
- (5) In any case in which a dwelling consists of a rental unit or rental units, the State, in the implementation of this part, shall ensure that—
 - (A) the benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;
 - **(B)** for a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization

work performed;

- **(C)** the enforcement of subparagraph (B) is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and
- **(D)** no undue or excessive enhancement will occur to the value of such dwelling units.
- **(6)** As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation from the owners of such buildings.

(c) Failure of State to submit application; alternate application by any unit of general purpose local government or community action agency; submission of amended application by State

If a State does not, within 90 days after the date on which final regulations are promulgated under this section, submit an application to the Secretary which meets the requirements set forth in section 6864 of this title, any unit of general purpose local government of sufficient size (as determined by the Secretary), or a community action agency carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.], may, in lieu of such State, submit an application (meeting such requirements and subject to all other provisions of this part) for carrying out projects under this part within the geographical area which is subject to the jurisdiction of such government or is served by such agency. A State may, in accordance with regulations promulgated under this part, submit an amended application.

(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds

- (1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.
- (2) The sums reserved by the Secretary on the basis of his determination under this subsection shall be granted to the tribal organization serving the individuals for whom such a determination has been made, or, where there is no tribal organization, to such other entity as he determines has the capacity to provide services pursuant to this part.
- (3) In order for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 6864 of this title.

(e) Transfer of funds

Notwithstanding any other provision of law, the Secretary may transfer to the Director sums appropriated under this part to be utilized in order to carry out programs, under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809 (a)(12)], which further the purpose of this part.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6864

§ 6864. Financial assistance

(a) Annual application; contents; allocation to

States

The Secretary shall provide financial assistance, from sums appropriated for any fiscal year under this part, only upon annual application. Each such application shall describe the estimated number and characteristics of the low-income persons and the number of dwelling units to be assisted and the criteria and methods to be used by the applicant in providing weatherization assistance to such persons. The application shall also contain such other information (including information needed for evaluation purposes) and assurances as may be required

- (1) in the regulations promulgated pursuant to section 6863 of this title and
- (2) to carry out this section. The Secretary shall allocate financial assistance to each State on the basis of the relative need for weatherization assistance among low-income persons throughout the States, taking into account the following factors:
 - (A) The number of dwelling units to be weatherized.
- **(B)** The climatic conditions in the State respecting energy conservation, which may include consideration of annual degree days.
- (C) The type of weatherization work to be done in the various settings.
- **(D)** Such other factors as the Secretary may determine necessary, such as the cost of heating and cooling, in order to carry out the purpose and provisions of this part.

(b) Requirements for assistance

The Secretary shall not provide financial assistance under this part unless the applicant has provided reasonable assurances that it has—

- (1) established a policy advisory council which
 - (A) has special qualifications and sensitivity with respect to solving the problems of low-income persons (including the weatherization and energy-conservation problems of such persons),
 - **(B)** is broadly representative of organizations and agencies which are providing services to such persons in the State or geographical area in question, and
 - (C) is responsible for advising the responsible official or agency

administering the allocation of financial assistance in such State or area with respect to the development and implementation of such weatherization assistance program;

- (2) established priorities to govern the provision of weatherization assistance to low-income persons, including methods to provide priority to elderly and handicapped low-income persons, and such priority as the applicant determines is appropriate for single-family or other high-energy-consuming dwelling units;
- (3) established policies and procedures designed to assure that financial assistance provided under this part will be used to supplement, and not to supplant, State or local funds, and, to the extent practicable, to increase the amounts of such funds that would be made available in the absence of Federal funds for carrying out the purpose of this part, including plans and procedures
 - (A) for securing, to the maximum extent practicable, the services of volunteers and training participants and public service employment workers, pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], to work under the supervision of qualified supervisors and foremen,
 - **(B)** for using Federal financial assistance under this part to increase the portion of low-income weatherization assistance that the State obtains from non-Federal sources, including private sources, and
 - (C) for complying with the limitations set forth in section 6865 of this title; and
- (4) selected on the basis of public comment received during a public hearing conducted pursuant to section 6865 (b)(1) of this title, and other appropriate findings, community action agencies or other public or nonprofit entities to undertake the weatherization activities authorized by this subchapter: Provided, Such selection shall be based on the agency's experience and performance in weatherization or housing renovation activities, experience in assisting low-income persons in the area to be served, and the capacity to undertake a timely and effective weatherization program: Provided further, That in making such selection preference shall be given to any community action agency or other public or nonprofit entity which has, or is currently administering, an effective program under this subchapter or under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.].

(c) Annual update of data used in allocating funds

Effective with fiscal year 1991, and annually thereafter, the Secretary shall update the population, eligible households, climatic, residential energy use, and all other data used in allocating the funds under this part among the States pursuant to subsection (a) of this section.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6864a

§ 6864a. Private sector investments

(a) In general

The Secretary shall, to the extent funds are made available for such purpose, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for the development and initial implementation of partnerships, agreements, or other arrangements with utilities, private sector interests, or other institutions, under which non-Federal financial assistance would be made available to support programs which install energy efficiency improvements in low-income housing.

(b) Use of funds

Financial assistance provided under this section may be used for—

- (1) the negotiation of such partnerships, agreements and other arrangements;
- (2) the presentation of arguments before State or local agencies;
- (3) expert advice on the development of such partnerships, agreements, and other arrangements; or
- **(4)** other activities reasonably associated with the development and initial implementation of such arrangements.

(c) Conditions

- (1) Financial assistance provided under this section to entities other than States shall, to the extent practicable, coincide with the timing of financial assistance provided to such entities under section 6863 or section 6864 of this title.
- (2) Not less than 80 percent of amounts provided under this section shall be provided to entities other than States.
- (3) A recipient of financial assistance under this section shall have up to three years to complete projects undertaken with such assistance.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6864b

§ 6864b. Technical transfer grants

(a) In general

The Secretary may, to the extent funds are made available, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for—

- (1) evaluating technical and management measures which increase program and/or private entity performance in weatherizing low-income housing;
- (2) producing technical information for use by persons involved in weatherizing low-income housing;
- (3) exchanging information; and
- (4) conducting training programs for persons involved in weatherizing low-income housing.

(b) Conditions

- (1) Not less than 50 percent of amounts provided under this section shall be awarded to entities other than States.
- (2) A recipient of financial assistance under this section may contract with nonprofit entities to carry out all or part of the activities for which such financial assistance is provided.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6865

§ 6865. Limitations on financial assistance

(a) Purchase of materials and

administration of projects

- (1) Not more than an amount equal to 10 percent of any grant made by the Secretary under this part may be used for administrative purposes in carrying out duties under this part, except that not more than one-half of such amount may be used by any State for such purposes, and a State may provide in the plan adopted pursuant to subsection (b) of this section for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grant for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part.
- (2) The Secretary shall establish energy audit procedures and techniques which
 - (i) meet standards established by the Secretary after consultation with the State Energy Advisory Board established under section 6325 (g) of this title,
 - (ii) establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency,
 - (iii) measure the energy requirement of individual dwellings and the rate of return of the total conservation investment in a dwelling, and
 - (iv) account for interaction among energy efficiency measures.

(b) Allocation, termination or discontinuance by Secretary

The Secretary shall insure that financial assistance provided under this part will—

- (1) be allocated within the State or area in accordance with a published State or area plan, which is adopted by such State after notice and a public hearing, describing the proposed funding distributions and recipients;
- (2) be allocated, pursuant to such State or area plan, to community action agencies carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.] or to other appropriate and qualified public or nonprofit entities in such State or area so that—
 - (A) funds will be allocated on the basis of the relative need for weatherization assistance among the low-income persons within such State or area, taking into account appropriate climatic and energy conservation factors; and

- **(B)** due consideration will be given to the results of periodic evaluations of the projects carried out under this part in light of available information regarding the current and anticipated energy and weatherization needs of low-income persons within the State; and
- (3) be terminated or discontinued during the application period only in accordance with policies and procedures consistent with the policies and procedures set forth in section 6868 of this title.

(c) Limitations on expenditures; exceptions; annual adjustments

- (1) Except as provided in paragraphs (3) and (4), the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of \$2,500 per dwelling unit weatherized in that State. Labor, weatherization materials, and related matter includes, but is not limited to—
 - (A) the appropriate portion of the cost of tools and equipment used to install weatherization materials for a dwelling unit;
 - (B) the cost of transporting labor, tools, and materials to a dwelling unit;
 - (C) the cost of having onsite supervisory personnel;
 - **(D)** the cost of making incidental repairs to a dwelling unit if such repairs are necessary to make the installation of weatherization materials effective, and
 - **(E)** the cost of making heating and cooling modifications, including replacement [1]
- (2) Dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1979, may receive further financial assistance for weatherization under this part.
- (3) Beginning with fiscal year 2000, the dwelling unit averages provided in paragraphs (1) and (4) shall be adjusted annually by increasing the average amount by an amount equal to—
 - (A) the average amount for the previous fiscal year, multiplied by
 - (B) the lesser of
 - (i) the percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the fiscal year for which the determination is being made, or
 - (ii) three percent.
- (4) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters for a renewable energy system shall not exceed an average of \$3,000 per dwelling unit.
- (5)
- (A) The Secretary shall by regulations—
 - (i) establish the criteria which are to be used in prescribing performance and quality standards under paragraph (6)(A)(ii) or in

specifying any form of renewable energy under paragraph (6)(A)(i)(I); and

- (ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this paragraph, as a renewable energy system.
- (B) The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) within 1 year after the filing of the request, together with any information required to be filed with such request under subparagraph (A)(ii).
- **(C)** Each month the Secretary shall publish a report of any request under subparagraph (A)(ii) which has been denied during the preceding month and the reasons for the denial.
- **(D)** The Secretary shall not specify any form of renewable energy under paragraph (6)(A)(i)(I) unless the Secretary determines that—
 - (i) there will be a reduction in oil or natural gas consumption as a result of such specification;
 - (ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety; and
 - (iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).
- (6) In this subsection—
 - (A) the term "renewable energy system" means a system which—
 - (i) when installed in connection with a dwelling, transmits or uses—
 - (I) solar energy, energy derived from the geothermal deposits, energy derived from biomass, or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling; or
 - (II) wind energy for nonbusiness residential purposes;
 - (ii) meets the performance and quality standards (if any) which have been prescribed by the Secretary by regulations;
 - (iii) in the case of a combustion rated system, has a thermal efficiency rating of at least 75 percent; and
 - (iv) in the case of a solar system, has a thermal efficiency rating of at least 15 percent; and
 - **(B)** the term "biomass" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

(d) Supplementary financial assistance to States

Beginning with fiscal year 1992, the Secretary may allocate funds appropriated pursuant to section $6872~(b)~^{[2]}$ of this title to provide supplementary financial assistance to those States which the Secretary determines have achieved the best performance during the previous fiscal year in achieving the purposes of this part. In making this determination, the Secretary shall—

- (1) consult with the State Energy Advisory Board established under section 6325 (g) of this title; and
- (2) give priority to those States which, during such previous fiscal year, obtained a significant portion of income from non-Federal sources for their weatherization programs or increased significantly the portion of low-income weatherization assistance that the State obtained from non-Federal sources.

(e) Supplementary financial assistance to grant recipients

(1)

- (A) Beginning with fiscal year 1992, the Secretary may allocate, from funds appropriated pursuant to section $6872~(b)~^{[2]}$ of this title, among the States an equal amount for each State not to exceed \$100,000 per State. Each State shall make available amounts received under this subsection to provide supplementary financial assistance to recipients of grants under this part that have achieved the best performance during the previous fiscal year in advancing the purposes of this part.
- (B) None of the funds made available under this subsection may be used by any State for administrative purposes.
- (2) The Secretary shall, after consulting with the State Energy Advisory Board referred to in subsection (d)(1) of this section, prescribe guidelines to be used by each State in making available supplementary financial assistance under this subsection, with a priority being given to subgrantees that, by law or through administrative or other executive action, provided non-Federal resources (including private resources) to supplement Federal financial assistance under this part during the previous fiscal year.

^[1] So in original. Probably should be followed by a period.

^[2] See References in Text note below.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6866

§ 6866. Monitoring and evaluation of funded projects; technical assistance; limitation on assistance

The Secretary, in coordination with the Director, shall monitor and evaluate the operation of projects

receiving financial assistance under this part through methods provided for in section 6867 (a) of this title, through onsite inspections, or through other means, in order to assure the effective provision of weatherization assistance for the dwelling units of low-income persons. The Secretary shall also carry out periodic evaluations of the program authorized by this part and projects receiving financial assistance under this part. The Secretary may provide technical assistance to any such project, directly and through persons and entities with a demonstrated capacity in developing and implementing appropriate technology for enhancing the effectiveness of the provision of weatherization assistance to the dwelling units of low-income persons, utilizing in any fiscal year not to exceed 10 percent of the sums appropriated for such year under this part.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6867

§ 6867. Administration of projects receiving financial assistance

(a) Reporting requirements

The Secretary, in consultation with the Director, by general or special orders, may require any recipient of financial assistance under this part to provide, in such form as he may prescribe, such reports or answers in writing to specific questions, surveys, or questionnaires as may be necessary to enable the Secretary and the Director to carry out their functions under this part.

(b) Maintenance of records

Each person responsible for the administration of a weatherization assistance project receiving financial assistance under this part shall keep such records as the Secretary may prescribe in order to assure an effective financial audit and performance evaluation of such project.

(c) Audit and examination of books, etc.

The Secretary, the Director (with respect to community action agencies), and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any project receiving financial assistance under this part that are pertinent to the financial assistance received under this part.

(d) Method of payments

Payments under this part may be made in installments and in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6868

§ 6868. Approval of application or amendment for financial assistance; administrative procedures applicable

(a) The Secretary shall not finally disapprove any application submitted under this part, or any amendment thereto,

without first affording the State (or unit of general purpose local government or community action agency under section 6863 (c) of this title, as appropriate) in question, as well as other interested parties, reasonable notice and an opportunity for a public hearing. The Secretary may consolidate into a single hearing the consideration of more than one such application for a particular fiscal year to carry out projects within a particular State. Whenever the Secretary, after reasonable notice and an opportunity for a public hearing, finds that there is a failure to comply substantially with the provisions of this part or regulations promulgated under this part, he shall notify the agency or institution involved and other interested parties that such State (or unit of general purpose local government or agency, as appropriate) will no longer be eligible to participate in the program under this part until the Secretary is satisfied that there is no longer any such failure to comply.

(b) Reasonable notice under this section shall include a written notice of intention to act adversely (including a statement of the reasons therefor) and a reasonable period of time within which to submit corrective amendments to the application, or to propose corrective action.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6869

§ 6869. Judicial review of final action by Secretary on application

(a) Time for appeal; jurisdiction; filing of administrative record

by Secretary

If any applicant is dissatisfied with the Secretary's final action with respect to the application submitted by it under section 6864 of this title, or with a final action under section 6868 of this title, such applicant may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which the State involved is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(b) Conclusiveness of findings of Secretary; remand; modified findings by Secretary; certification of record

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. The court may, for good cause shown, remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action. The Secretary shall certify to the court the record of any such further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Power of court to affirm or set aside action of Secretary; appeal to Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6870

§ 6870. Prohibition against discrimination; notification to funded project of violation; penalties for failure to comply

(a) No person in the United States shall, on the ground of race, color, national origin, or sex, or on the ground of any

other factor specified in any Federal law prohibiting discrimination, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, project, or activity supported in whole or in part with financial assistance under this part.

- (b) Whenever the Secretary determines that a recipient of financial assistance under this part has failed to comply with subsection (a) of this section or any applicable regulation, he shall notify the recipient thereof in order to secure compliance. If, within a reasonable period of time thereafter, such recipient fails to comply, the Secretary shall—
 - (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
 - (2) exercise the power and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and any other applicable Federal nondiscrimination law; or
 - (3) take such other action as may be authorized by law.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6871

§ 6871. Annual report by Secretary and Director to President and Congress on weatherization program

The Secretary and (with respect to the operation and effectiveness of activities carried out through community action

agencies) the Director shall each submit, on or before March 31, 1977, and annually thereafter, a report to the Congress and the President describing the weatherization assistance program carried out under this part or any other provision of law, including the results of the periodic evaluations and monitoring activities required by section 6866 of this title. Such report shall include information and data furnished by each State on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance under this part.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6872

§ 6872. Authorization of appropriations

For the purpose of carrying out the

weatherization program under this part, there are authorized to be appropriated \$500,000,000 for fiscal year 2006, \$600,000,000 for fiscal year 2007, and \$700,000,000 for fiscal year 2008.



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TITLE 42 > CHAPTER 81 > SUBCHAPTER III > Part A > § 6873

§ 6873. Availability of labor

The following actions shall be taken in order to

assure that there is a sufficient number of volunteers and training participants and public service employment workers, assisted pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Older American Community Service Employment Act, $^{[1]}$ available to work in support of weatherization programs conducted under part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], section 222(a)(12) $^{[1]}$ of the Economic Opportunity Act of 1964 [42 U.S.C. 2809 (a)(12)], and section 504 of the Housing Act of 1949 [42 U.S.C. 1474]:

- (1) First, the Secretary of Energy (in consultation with the Director of the Community Services Administration, the Secretary of Agriculture, and the Secretary of Labor) shall determine the number of individuals needed to supply sufficient labor to carry out such weatherization programs in the various areas of the country.
- (2) After the determination in paragraph (1) is made, the Secretary of Labor shall identify the areas of the country in which there is an insufficient number of such volunteers and training participants and public service employment workers.
- (3) After such areas are identified, the Secretary of Labor shall take steps to assure that such weatherization programs are supported to the maximum extent practicable in such areas by such volunteers and training participants and public service employment workers.

^[1] See References in Text note below.

SITE MAR

HOT CLICKS Message Boa What's New Pollution Occurrence Insurance VALUE SIGN Overview/History > DOE Offices Related Sites Regulations/Guid Glossary FECHNICAL TOOLS Energy Audits Health and Safety ENERGY STAR® > Refrigerator Guide Water Heater Guide PUBLIC INFORMATION CAMPAIGN CLIENT EDUCATION Publicati 0117/17 #: F: \$47.847 C Fraining Facilities Training Opportunities

U.S. Department of Energy - Weatherization Assistance Program for Low-Income Persons - Title 10, Part 440, Direct Final Rule - Federal Register, June 22, 2006

<u>Direct Final Rule - Federal Register, June 22, 2006</u> (Regulatory changes mandated by the Energy Policy Act of 2005- PDF format for download)

APPENDIX A TO PART 440 - Standards for Weatherization Materials (PDF format for download)

Searchable Format - Table of Contents (Does not include regulatory changes mandated by the Energy Policy Act of 2005, which will be incorporated into the full regultory text soon.)

Sec. 440.1 Purpose and scope.

Sec. 440.2 Administration of grants.

WEATHERIZATION
ASSISTANCE PROGRAM

TECHNICAL ASSISTANCE CENTER

Sec. 440.3 Definitions.

Sec. 440.10 Allocation of funds.

Sec. 440.11 Native Americans.

Sec. 440.12 State application.

Sec. 440.13 Local applications.

Sec. 440.14 State plans.

Sec. 440.15 Subgrantees.

Sec. 440,16 Minimum program requirements.

Sec. 440.17 Policy Advisory Council.

Sec. 440.18 Allowable expenditures.

Sec. 440.19 Labor.

Sec. 440.20 Low-cost/no-cost weatherization activities.

Sec. 440.21 Weatherization material standards and energy audit procedures.

Sec. 440.22 Eligible dwelling units.

Sec. 440.23 Oversight, training, and technical assistance.

Sec. 440.24 Recordkeeping.

Sec. 440.25 Reports.

Sec. 440.26 to 440.29 [Reserved]

Sec. 440.30 Administrative review.

Authority: 42 U.S.C. 6861 et seq.; 42 U.S.C. 7101 et seq.

Source: 49 FR 3629, Jan. 27, 1984, unless otherwise noted.

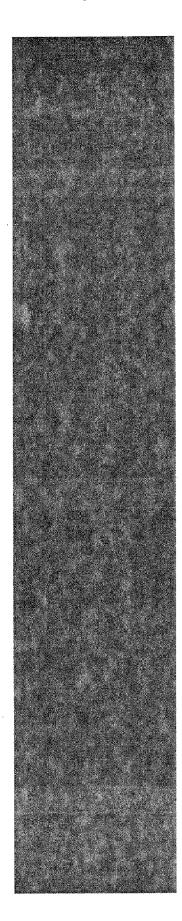
Section 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

[65 FR 77217, Dec. 8, 2000]

Section 440.2 Administration of grants.

Grant awards under this part shall comply with applicable law including, without limitation, the requirements of:



- (a) Executive Order 12372 entitled "Intergovernmental Review of Federal Programs", 48 FR 3130, and the DOE Regulation implementing this Executive Order entitled "Intergovernmental Review of Department of Energy Programs and Activities" (10 CFR part 1005);
- (b) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Inter-Governmental Coordination Act of 1968;"
- (c) Unless in conflict with provisions of this part, the DOE Financial Assistance Rule (10 CFR part 600); and
- (d) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

Section 440.3 Definitions.

As used in this part:

Act means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 et seq.

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

Base Allocation means the fixed amount of funds for each State as set forth in (440.10(b)(1)).

Base temperature means the temperature used to compute heating and cooling degree days. The average daily outdoor temperature is subtracted from the base temperature to compute heating degree days, and the base temperature is subtracted from the average daily outdoor temperature to compute cooling degree days.

CAA means a Community Action Agency.

Capital-Intensive furnace or cooling efficiency modifications means those major heating and cooling modifications which require a substantial amount of funds, including replacement and major repairs, but excluding such items as tune-ups, minor repairs, and filters.

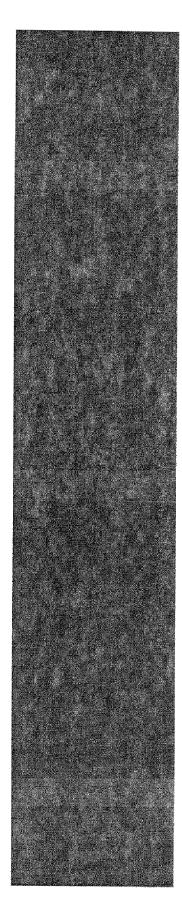
Children means dependents not exceeding 19 years or a lesser age set forth in the State plan.

Community Action Agency means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds received from Federal, State, local, or private funding entities to assess, design, operate, finance, and oversee antipoverty programs.

Cooling Degree Days means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.



Dwelling Unit means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

Elderly Person means a person who is 60 years of age or older.

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

Family Unit means all persons living together in a dwelling unit.

Formula Allocation means the amount of funds for each State as calculated based on the formula in Section 440.10(b)(3).

Formula Share means the percentage of the total formula allocation provided to each State as calculated in Section 440.10 (b)(3).

Governor means the chief executive officer of a State, including the Mayor of the District of Columbia.

Grantee means the State or other entity named in the Notification of Grant Award as the recipient.

Heating Degree Days means a population-weighted seasonal average of the climatological heating degree days for each weather station within a State, as determined by DOE.

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

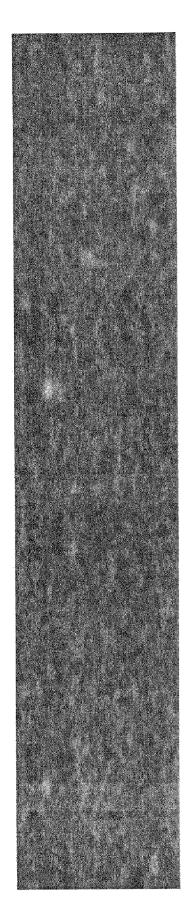
Incidental Repairs means those repairs necessary for the effective performance or preservation of weatherization materials. Such repairs include, but are not limited to, framing or repairing windows and doors which could not otherwise be caulked or weather-stripped and providing protective materials, such as paint, used to seal materials installed under this program.

Indian Tribe means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaskan native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, which (1) is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans, or (2) is located on, or in proximity to, a Federal or State reservation or rancheria.

Local Applicant means a CAA or other public or non profit entity unit of general purpose local government.

Low Income means that income in relation to family size which:

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Secretary of Health and Human Services, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964;



- (2) Is the basis on which cash assistance payments have been paid during the preceding twelve month-period under titles IV and XVI of the Social Security Act or applicable State or local law; or
- (3) If a State elects, is the basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

Native American means a person who is a member of an Indian tribe.

Non-Federal leveraged resources means those benefits identified by State or local agencies to supplement the Federal grant activities and that are made available to or used in conjunction with the DOE Weatherization Assistance Program for the purposes of the Act for use in eligible low-income dwelling units.

Persons with Disabilities means any individual (1) who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973, (2) who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or (3) who is receiving benefits under chapter 11 or 15 of title 38, U.S.C.

Program Allocation means the base allocation plus formula allocation for each State.

Relevant Reporting Period means the Federal fiscal year beginning on October 1 and running through September 30 of the following calendar year.

Rental Dwelling Unit means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

Residential Energy Expenditures means the average annual cost of purchased residential energy, including the cost of renewable energy resources.

Secretary means the Secretary of the Department of Energy.

Separate Living Quarters means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements, and includes shelters for homeless persons.

Shelter means a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

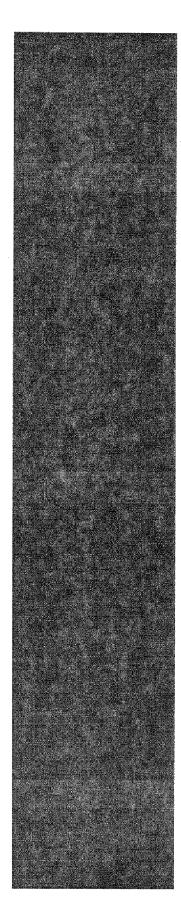
Single-Family Dwelling Unit means a structure containing no more than one dwelling unit.

Skirting means material used to border the bottom of a dwelling unit to prevent infiltration.

State means each of the States and the District of Columbia.

Subgrantee means an entity managing a weatherization project which receives a grant of funds awarded under this part from a grantee.

Regional Office Director means the Director of the DOE Field Regional Office with the responsibility for grant administration or any official to whom that function may



be redelegated by the Assistant Secretary.

Total Program Allocations means the annual appropriation less funds reserved for training and technical assistance.

Tribal Organization means the recognized governing body of any Indian tribe or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

Unit of General Purpose Local Government means any city, county, town, parish, village, or other general purpose political subdivision of a State.

Vestibule means an enclosure built around a primary entry to a dwelling unit.

Weatherization Materials mean:

- (1) Caulking and weatherstripping of doors and windows;
- (2) Furnace efficiency modifications including, but not limited to --
- (i) Replacement burners, furnaces, or boilers or any combination thereof;
- (ii) Devices for minimizing energy loss through heating system, chimney, or venting devices; and
- (iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;
- (3) Cooling efficiency modifications including, but not limited to --
- (i) Replacement air conditioners;
- (ii) Ventilation equipment;
- (iii) Screening and window films; and
- (iv) Shading devices.

Weatherization Project means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are energy inefficient.

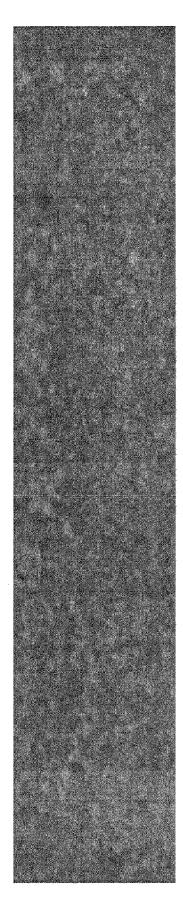
[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 712, Jan. 4, 1985; 50 FR 49917, Dec. 5, 1985; 55 FR 41325, Oct. 10, 1990; 58 FR 12525, Mar. 4, 1993; 60 FR 29480, June 5, 1995]

Section 440.10 Allocation of funds.

- (a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, upon annual application.
- (b) Based on total program allocations at or above the amount of total program allocations under Pub. L. 103-332, DOE shall determine the program allocation for each State from available funds as follows:
- (1) Allocate to each State a "Base Allocation" as listed in Table 1.

Table 1

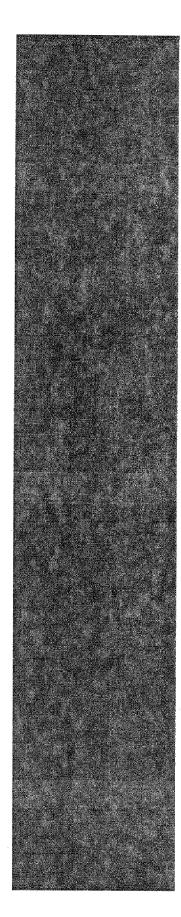
Alabama	1,636,000
Alaska	1,425,000
Arkansas	1,417,000
Arizona	760,000
California	4,404,000
Colorado	4,574,000



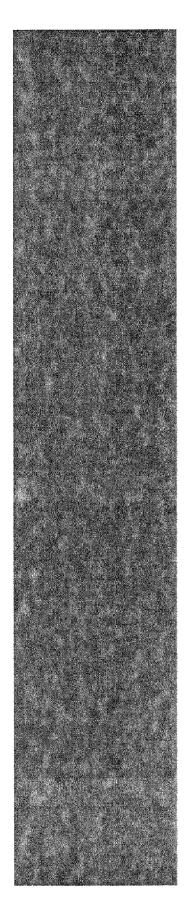
Connecticut	
Delaware	· ·
District of Columbia	'
Florida	
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	
Maryland	1,963,000
Massachusetts	•
Michigan	
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	1.193.000
New Jersey	
New Mexico	
New York	·
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	• '
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota,	
Tennessee	
Texas	
Utah	
Vermont	, ,
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	
,	or poor
Total	171 258 000

Total......171,258,000

- (2) Subtract 171,258,000 from total program allocations.
- (3) Calculate each State's formula share as follows:
- (i) Divide the number of "Low Income" households in each State by the number of "Low Income" households in the United States and multiply by 100.
- (ii) Divide the number of "Heating Degree Days" for each State by the median "Heating Degree Days" for all States.



- (iii) Divide the number of "Cooling Degree Days" for each State by the median "Cooling Degree Days" for all States, then multiply by 0.1.
- (iv) Calculate the sum of the two numbers from paragraph (b)(3)(ii) and (iii) of this section.
- (v) Divide the residential energy expenditures for each State by the number of households in the State.
- (vi) Divide the sum of the residential energy expenditures for the States in each Census division by the sum of the households for the States in that division.
- (vii) Divide the quotient from paragraph (b)(3)(v) of this section by the quotient from paragraph (b)(3)(vi) of this section.
- (viii) Multiply the quotient from paragraph (b)(3)(vii) of this section for each State by the residential energy expenditures per low-income household for its respective Census division.
- (ix) Divide the product from paragraph (b)(3)(viii) of this section for each State by the median of the products of all States.
- (x) Multiply the results for paragraph (b)(3)(i), (iv) and (ix) of this section for each State.
- (xi) Divide the product in paragraph (b)(3)(x) of this section for each State by the sum of the products in paragraph (b)(3)(x) of this section for all States.
- (4) Calculate each State's program allocation as follows:
- (i) Multiply the remaining funds calculated in paragraph (b)(2) of this section by the formula share calculated in paragraph (b)(3)(xi) of this section,
- (ii) Add the base allocation from paragraph (b)(1) of this section to the product of paragraph (b)(4)(i) of this section.
- (c) Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103-332, then each State's program allocation shall be reduced from its allocated amount under Pub. L. 103-332 by the same percentage as total program allocations for the fiscal year fall below the total program allocations under Pub. L. 103-332.
- (d) All data sources used in the development of the formula are publicly available. The relevant data is available from the Bureau of the Census, the Department of Energy's Energy Information Administration and the National Oceanic and Atmospheric Administration.
- (e) Should updates to the data used in the formula become available in any fiscal year, these changes would be implemented in the formula in the following program year.
- (f) DOE may reduce the program allocation for a State by the amount DOE determines cannot be reasonably expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remains to be weatherized with the unexpended financial assistance.
- (g) DOE may increase the program allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.



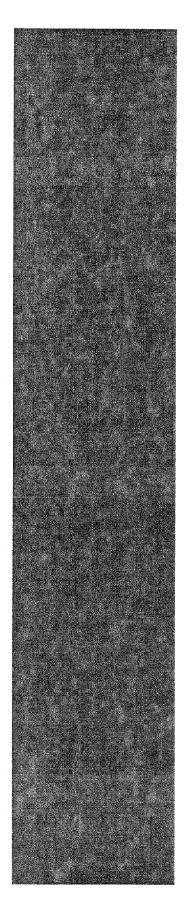
(h) The Support Office Director shall notify each State of the program allocation for which that State is eligible to apply.

[60 FR 29480, June 5, 1995]

Section 440.11 Native Americans.

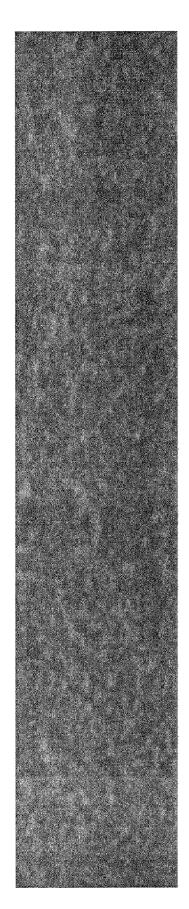
- (a) Notwithstanding any other provision of this part, the Support Office Director may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this part, that:
- (1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this part and
- (2) The low-income members of such tribe would be better served by means of a grant made directly to provide such assistance.
- (b) In any State for which the Support Office Director shall have made the determination referred to in paragraph (a) of this section, the Support Office Director shall reserve from the sums that would otherwise be allocated to the State under this part not less than 100 percent, or more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.
- (c) The Support Office Director shall make the determination prescribed in paragraph (a) of this section in the event a State:
- (1) Does not apply within the sixty-day time period prescribed in Section 440.12(a);
- (2) Recommends that direct grants be made for low-income members of an Indian tribe as provided in Section 440.12(b)(5);
- (3) Files an application which DOE determines, in accordance with the procedures in '440.30, not to make adequate provision for the low-income members of an Indian tribe residing in the State; or
- (4) Has received grant funds and DOE determines, in accordance with the procedures in '440.30, that the State has failed to implement the procedures required by Section 440.16(6).
- (d) Any sums reserved by the Support Office Director pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Support Office Director determines is able to provide adequate weatherization assistance pursuant to this part. Where the Support Office Director intends to make a grant to an organization to perform services benefitting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.
- (e) Within 30 days after the Support Office Director has reserved funds pursuant to paragraph (b) of this section, the Support Office Director shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.
- (f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose local government eligible to apply for funds hereunder, pursuant to the provisions of Section 440.13.

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993]



Section 440.12 State application.

- (a) To be eligible for financial assistance under this part, a State shall submit an application to DOE in conformity with the requirements of this part not later than 60 days after the date of notice to apply is received from the Support Office Director. After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete or to bring the application into compliance with the requirements of this part. The Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete the application, the Support Office Director may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under '440.30 of this part.
- (b) Each application shall include:
- The name and address of the State agency or office responsible for administering the program;
- (2) A copy of the final State plan prepared after notice and a public hearing in accordance with Section 440.14(a), except that an application by a local applicant need not include a copy of the final State plan;
- (3) The budget for total funds applied for under the Act, which shall include a justification and explanation of any amounts requested for expenditure pursuant to Section 440.18(d) for State administration;
- (4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded --
- (i) With financial assistance previously obligated under this part, and
- (ii) With the program allocation to the State;
- (5) A recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to Section 440.13(b), if such a recommendation is to be made;
- (6) A monitoring plan which shall indicate the method used by the State to insure the quality of work and adequate financial management control at the subgrantee level;
- (7) A training and technical assistance plan which shall indicate how funds for training and technical assistance will be used; and
- (8) Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.
- (c) On or before 60 days from the date that a timely filed application is complete, the Support Office Director shall decide whether DOE shall approve the application. The Support Office Director may --
- (1) Approve the application in whole or in part to the extent that the application conforms to the requirements of this part;
- (2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or
- (3) Disapprove the application if it does not conform to the requirements of this part.



(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 712, Jan. 4, 1985; 55 FR 41325, Oct. 10, 1990; 58 FR 12529, Mar. 4, 1993; 60 FR 29481, June 5, 1995]

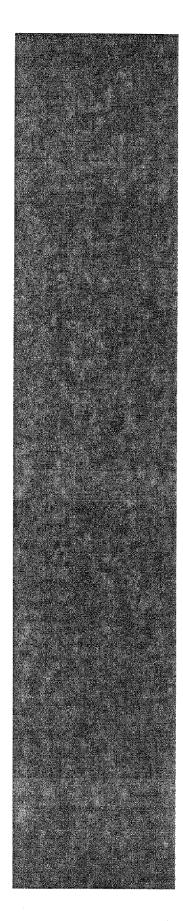
Section 440.13 Local applications.

- (a) The Support Office Director shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this part in the event:
- (1) A State, within which a local applicant is situated, fails to submit an application within 60 days after notice in accordance with Section 440.12(a) or
- (2) The Support Office Director finally disapproves the application of a State, and, under Section 440.30, either no appeal is filed or the Support Office Director's decision is affirmed.
- (b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to Section 440.12(b) to the Support Office Director within 30 days after receiving the notice referred to in paragraph (a) of this section.
- (c) In the event one or more local applicants submits an application for financial assistance to carry out projects in the same geographical area, the Support Office Director shall hold a public hearing with the same procedures that apply under section Section 440.14(a).
- (d) Based on the information provided by a local applicant and developed in any hearing held under paragraph (c) of this section, the Support Office Director shall determine in writing whether to award a grant to carry out one or more weatherization projects.
- (e) If there is an adverse decision in whole or in part under paragraph (d) of this section, that decision is subject to administrative review under Section 440.30 of this part.
- (f) If, after a State application has been finally disapproved by DOE and the Support Office Director approves local applications under this section, the Support Office Director may reject a new State application in whole or in part as disruptive and untimely without prejudice to submission of an application for the next program year.

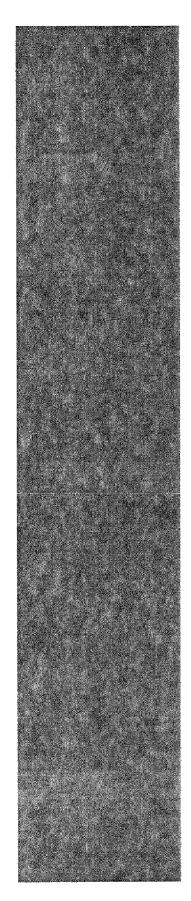
(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12525, 12529, Mar. 4, 1993] Section 440.14 **State plans.**

- (a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.
- (b) The proposed State plan must:
- (1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount of funding each will receive;



- (2) Address the other items contained in paragraph (c) of this section; and
- (3) Be made available throughout the State prior to the hearing.
- (c) After the hearing, the State must prepare a final State plan that identifies and describes:
- (1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;
- (2) The climatic conditions within the State;
- (3) The type of weatherization work to be done;
- (4) An estimate of the amount of energy to be conserved;
- (5) Each area to be served by a weatherization project within the State, and must include for each area:
- (i) The tentative allocation:
- (ii) The number of dwelling units expected to be weatherized during the program year; and
- (iii) Sources of labor.
- (6) How the State plan is to be implemented, including:
- (i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;
- (ii) An explanation of the method used to select each area served by a weatherization project;
- (iii) The extent to which priority will be given to the weatherization of single-family or other high energy-consuming dwelling units;
- (iv) The amount of non-Federal resources to be applied to the program;
- (v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;
- (vi) The amount of weatherization grant funds allocated to the State under this part;
- (vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;
- (viii) The average amount of the DOE funds specified in Section 440.18(c)(1) through (9) to be applied to any dwelling unit;
- (ix) [Reserved]
- (x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in Section 440.18(d);
- (xi) Procedures for determining the most cost-effective measures in a dwelling unit;
- (xii) The definition of "low-income" which the State has chosen for determining eligibility for use statewide in accordance with Section 440.22(a);
- (xiii) The definition of "children" which the State has chosen consistent with Section 440.3; and

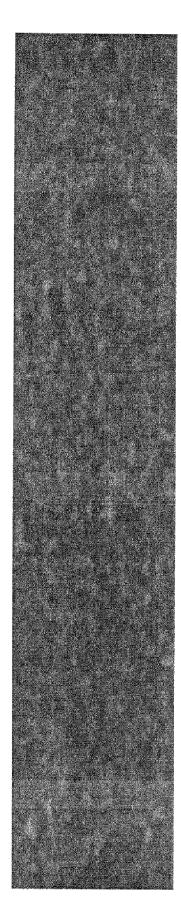


(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

[65 FR 77217, Dec. 8, 2000, as amended at 66 FR 58366, Nov. 21, 2001] Section 440.15 **Subgrantees.**

- (a) The grantee shall ensure that:
- (1) Each subgrantee is a CAA or other public or nonprofit entity;
- (2) Each subgrantee is selected on the basis of public comment received during a public hearing conducted pursuant to Section 440.14(a) and other appropriate findings regarding:
- (i) The subgrantee's experience and performance in weatherization or housing renovation activities;
- (ii) The subgrantee's experience in assisting low-income persons in the area to be served; and
- (iii) The subgrantee's capacity to undertake a timely and effective weatherization program.
- (3) In selecting a subgrantee, preference is given to any CAA or other public or nonprofit entity which has, or is currently administering, an effective program under this part or under title II of the Economic Opportunity Act of 1964, with program effectiveness evaluated by consideration of factors including, but not necessarily limited to, the following:
- (i) The extent to which the past or current program achieved or is achieving weatherization goals in a timely fashion;
- (ii) The quality of work performed by the subgrantee;
- (iii) The number, qualifications, and experience of the staff members of the subgrantee; and
- (iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.
- (b) The grantee shall ensure that the funds received under this part will be allocated to the entities selected in accordance with paragraph (a) of this section, such that funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons.
- (c) If DOE finds that a subgrantee selected to undertake weatherization activities under this part has failed to comply substantially with the provisions of the Act or this part and should be replaced, such finding shall be treated as a finding under Section 440.30(i) for purposes of '440.30.
- (d) Any new or additional subgrantee shall be selected at a hearing in accordance with Section 440.14(a) and upon the basis of the criteria in paragraph (a) of this section.
- (e) A State may terminate financial assistance under a subgrant agreement for a grant period only in accordance with established State procedures that provide to the subgrantee appropriate notice of the State's reasons for termination and afford the subgrantee an adequate opportunity to be heard.

[49 FR 3629, Jan. 27, 1984, as amended at 55 FR 41326, Oct. 10, 1990; 58 FR

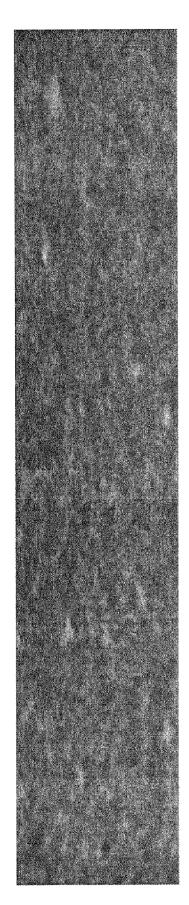


12526, Mar. 4, 1993; 65 FR 77218, Dec. 8, 2000]

Section 440.16 Minimum program requirements.

Prior to the expenditure of any grant funds each grantee shall develop, publish, and implement procedures to ensure that:

- (a) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in Section 440.22;
- (b) Priority is given to identifying and providing weatherization assistance to:
- (1) Elderly persons;
- (2) Persons with disabilities;
- (3) Families with children;
- (4) High residential energy users; and
- (5) Households with a high energy burden.
- (c) Financial assistance provided under this part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this part;
- (d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;
- (e) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local, or privately funded programs in order to improve energy efficiency and to conserve energy;
- (f) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in Section 440,12(b)(5);
- (g) No dwelling unit may be reported to DOE as completed until all weatherization materials have been installed and the subgrantee, or its authorized representative, has performed a final inspection(s) including any mechanical work performed and certified that the work has been completed in a workmanlike manner and in accordance with the priority determined by the audit procedures required by Section 440.21; and
- (h) Subgrantees limit expenditure of funds under this part for installation of materials (other than weatherization materials) to abate energy-related health and safety hazards, to a list of types of such hazards, permissible abatement materials and their costs which is submitted, and updated as necessary at the same time as an annual application under Section 440.12 of this part and which DOE shall approve if --
- (1) Elimination of such hazards are necessary before, or as a result of, installation of weatherization materials; and
- (2) The grantee sets forth a limitation on the percent of average dwelling unit costs which may be used to abate such hazards which is reasonable in light of the primary energy conservation purpose of this part;
- (i) The benefits of weatherization to occupants of rental units are protected in accordance with Section 440.22(b)(3) of this part.



(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12526, Mår. 4, 1993; 65 FR 77218, Dec. 8, 2000]

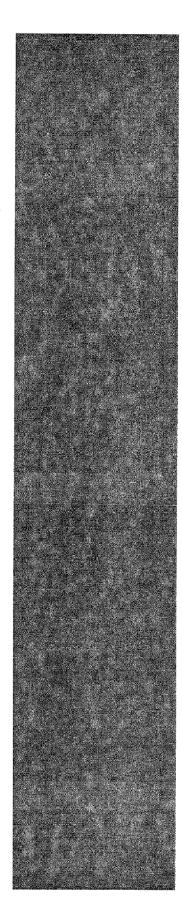
Section 440.17 Policy Advisory Council.

- (a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Regional Office Director if a State does not participate in the Program which:
- (1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;
- (2) Is broadly representative of organizations and agencies, including consumer groups that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State or geographical area in question; and
- (3) Has responsibility for advising the appropriate official or agency administering the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.
- (b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.
- (c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

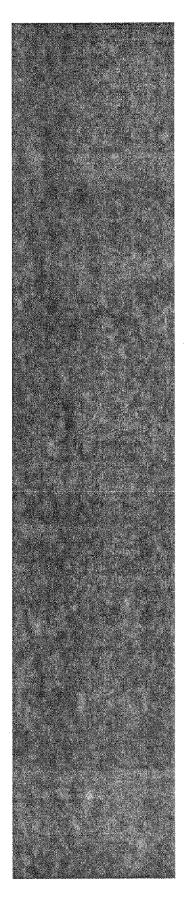
[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993; 65 FR 77218, Dec. 8, 2000]

Section 440.18 Allowable expenditures.

- (a) Except as adjusted, the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters included in paragraphs (c)(1) through (9) of this section shall not exceed an average of \$2,500 per dwelling unit weatherized in the State, except as adjusted in paragraph (b) of this section.
- (b) The \$2,500 average will be adjusted annually by DOE beginning in calendar year 2000 by increasing the limitation by an amount equal to:
- (1) The limitation amount for the previous year, multiplied by
- (2) The lesser of:
- (i) The percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the year for which the determination is being made, or
- (ii) Three percent.
- (3) For the purposes of determining the average cost per dwelling limitation, costs for the purchase of vehicles or other certain types of equipment as defined in 10 CFR part 600 may be amortized over the useful life of the vehicle or equipment.
- (c) Allowable expenditures under this part include only:



- (1) The cost of purchase and delivery of weatherization materials;
- (2) Labor costs, in accordance with Section 440.19;
- (3) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work:
- (4) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;
- (5) Maintenance of tools and equipment;
- (6) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.
- (7) Employment of on-site supervisory personnel;
- (8) Storage of weatherization materials, tools, and equipment;
- (9) The cost of incidental repairs if such repairs are necessary to make the installation of weatherization materials effective:
- (10) The cost of liability insurance for weatherization projects for personal injury and for property damage;
- (11) The cost of carrying out low-cost/no-cost weatherization activities in accordance with Section 440.20;
- (12) The cost of weatherization program financial audits as required by Section 440.23(d);
- (13) Allowable administrative expenses under paragraph (d) of this section; and
- (14) Funds used for leveraging activities in accordance with Section 440.14(b)(9) (xiv); and
- (15) The cost of eliminating health and safety hazards elimination of which is necessary before, or because of, installation of weatherization materials.
- (d) Not more than 10 percent of any grant made to a State may be used by the grantee and subgrantees for administrative purposes in carrying out duties under this part, except that not more than 5 percent may be used by the State for such purposes, and not less than 5 percent must be made available to subgrantees by States. A State may provide in its annual plan for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grants for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by DOE pursuant to this part.
- (e) No grant funds awarded under this part shall be used for any of the following purposes:
- (1) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or
- (2) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under this part, except:
- (i) As provided under Section 440.20;
- (ii) If such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance; or



(iii) That dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1993, may receive further financial assistance for weatherization under this part. While DOE will continue to require these homes to be reported separately, States may count these homes as completions for the purposes of compliance with the perhome expenditure limit in Section 440.18. Each dwelling unit must receive a new energy audit which takes into account any previous energy conservation improvements to the dwelling.

[58 FR 12526, Mar. 4, 1993, as amended at 65 FR 77218, Dec. 8, 2000; 66 FR 58366, Nov. 21, 2001]

Section 440.19 Labor.

Payments for labor costs under Section 440.18(c)(2) must consist of:

- (a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and
- (b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

[65 FR 77218, Feburary 1, 2002]

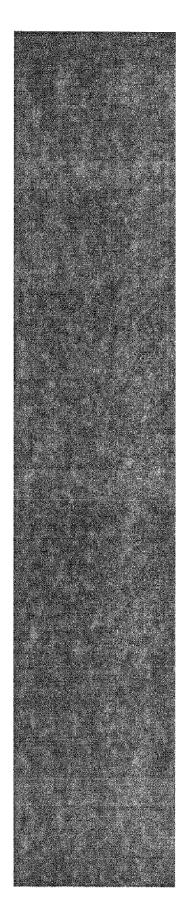
Section 440.20 Low-cost/no-cost weatherization activities.

- (a) An eligible dwelling unit may be weatherized without regard to the limitations contained in Section 440.18 (e)(2) or Section 440.21(b) from funds designated by the grantee for carrying out low-cost/no- cost weatherization activities provided:
- (1) Inexpensive weatherization materials are used, such as water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weatherstripping, caulking, glass patching, and insulation for plugging and
- (2) No labor paid with funds provided under this part is used to install weatherization materials referred to in paragraph (a)(1) of this section.
- (b) A maximum of 10 percent of the amount allocated to a subgrantee, not to exceed \$50 in materials costs per dwelling unit, may be expended to carry out low-cost/no-cost weatherization activities, unless the Support Office Director approves a higher expenditure per dwelling unit.

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 713, Jan. 4, 1985; 58 FR 12529, Mar. 4, 1993]

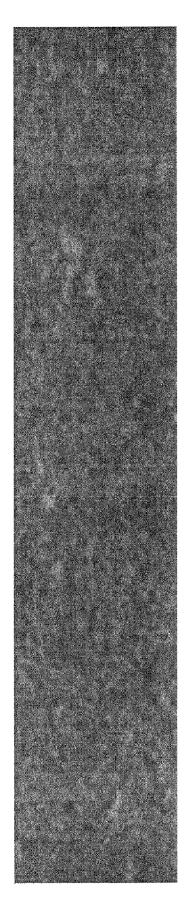
Section 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) and (d) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (e) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (f) and (g) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a



State's energy audit procedures. Paragraph (h) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every 5 years.

- (b) Only weatherization materials which are listed in Appendix A to this part and which meet or exceed standards prescribed in Appendix A to this part may be purchased with funds provided und1er this part. However, DOE may approve an unlisted material upon application from any State.
- (c) Except for materials to eliminate health and safety hazards allowable under Section 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. These materials must result in energy cost savings over the lifetime of the measure (s), discounted to present value, that equal or exceed the cost of materials, installation, and on-site supervisory personnel as defined by the Department. States have the option of requiring additional related costs to be included in the determination of cost-effectiveness. The cost of incidental repairs must be included in the cost of the package of measures installed in a dwelling.
- (d) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (c) of this section after:
- (1) Adjusting for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and
- (2) Eliminating any weatherization materials that are no longer cost-effective, as adjusted under paragraph (d)(1) of this section.
- (e) The energy audit procedures also must --
- (1) Compute the cost of fuel saved per year by taking into account the climatic data of the area where the dwelling unit is located, where the base temperature that determines the number of heating or cooling degree days (if used) reasonably approximates conditions when operation of heating and cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;
- (2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;
- (3) Address significant heating and cooling needs;
- (4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;
- (5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under Section 440.16 (h);
- (6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and
- (7) Be specifically approved by DOE for use on each major dwelling type that represents a significant portion of the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

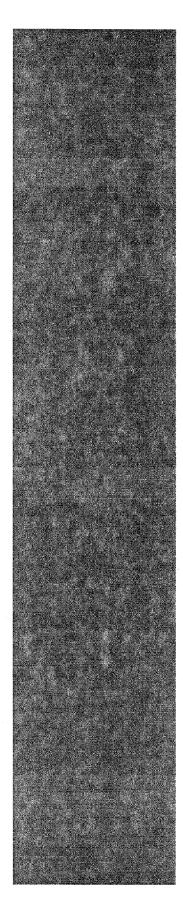


- (f) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (e) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.
- (g) States may use, as a part of an energy audit, general heat waste reduction weatherization materials that DOE has determined to be generally cost-effective. States may request approval to use general heat waste materials not listed in DOE policy guidance by providing documentation of their cost-effectiveness and a description of the circumstances under which such materials will be used.
- (h) States must resubmit their energy audit procedures (and priority lists, if applicable, under certain conditions) to DOE for approval every five years. States must also resubmit to DOE, for approval every five years, their list of general heat waste materials in addition to those approved by DOE in policy guidance, if applicable. Policy guidance will describe the information States must submit to DOE and the circumstances that reduce or increase documentation requirements.

[65 FR 77218, Dec. 8, 2000]

Section 440.22 Eligible dwelling units.

- (a) A dwelling unit shall be eligible for weatherization assistance under this part if it is occupied by a family unit:
- (1) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;
- (2) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law at any time during the 12-month period preceding the determination of eligibility for weatherization assistance; or
- (3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.
- (b) A subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under paragraph (a) of this section, where:
- (1) The subgrantee has obtained the written permission of the owner or his agent;
- (2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:
- (i) Are eligible dwelling units, or
- (ii) Will become eligible dwelling units within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building; and
- (3) The grantee has established procedures for dwellings which consist of a rental



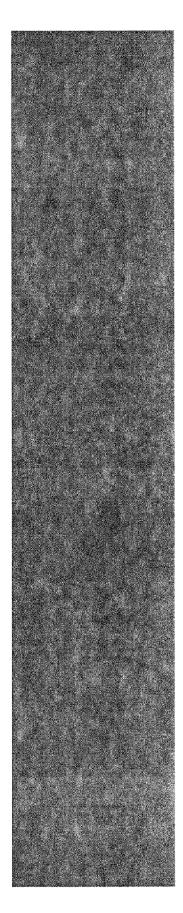
unit or rental units to ensure that:

- (i) The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;
- (ii) For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;
- (iii) The enforcement of paragraph (b)(3)(ii) of this section is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and
- (iv) No undue or excessive enhancement shall occur to the value of the dwelling units.
- (c) In order to secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part, States may seek landlord agreement to placement of a lien or to other contractual restrictions;
- (d) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation, when feasible, from the owners of such buildings. Such financial participation shall not be reported as program income, nor will it be treated as if it were appropriated funds. The funds contributed by the landlord shall be expended in accordance with the agreement between the landlord and the weatherization agency.
- (e) In devising procedures under paragraph (b)(3)(iii) of this section, States should consider requiring use of alternative dispute resolution procedures including arbitration.
- (f) A State may weatherize shelters. For the purpose of determining how many dwelling units exist in a shelter, a grantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit.

[58 FR 12528, Mar. 4, 1993, as amended at 65 FR 77219, Dec. 8, 2000]

Section 440.23 Oversight, training, and technical assistance.

- (a) The Secretary and the appropriate Support Office Director, in coordination with the Secretary of Health and Human Services, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this part through on-site inspections, or through other means, in order to ensure the effective provision of weatherization assistance for the dwelling units of low-income persons.
- (b) DOE shall also carry out periodic evaluations of a program and weatherization projects that are not carried out by a CAA and that are receiving financial assistance under this part.
- (c) The Secretary and the appropriate Support Office Director, the Comptroller General of the United States, and for a weatherization project carried out by a CAA, the Secretary of Health and Human Services or any of their duly authorized representatives, shall have access to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the Act for the purpose of audit and examination.



- (d) Each grantee shall ensure that audits by or on behalf of subgrantees are conducted with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less frequently than every two years, in accordance with 10 CFR part 600, and OMB Circular 110, Attachment F, as applicable.
- (e) The Secretary may reserve from the funds appropriated for any fiscal year an amount not to exceed 10 percent to provide, directly or indirectly, training and technical assistance to any grantee or subgrantee. Such training and technical assistance may include providing information concerning conservation practices to occupants of eligible dwelling units.

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993]

Section 440.24 Recordkeeping.

Each grantee or subgrantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the amount and disposition by each grantee and subgrantee of the funds received, the total cost of a weatherization project or the total expenditure to implement the State plan for which assistance was given or used, the source and amount of funds for such project or program not supplied by DOE, the average costs incurred in weatherization of individual dwelling units, the average size of the dwelling being weatherized, the average income of households receiving assistance under this part, and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with the DOE Financial Assistance Rule, 10 CFR part 600, and any further requirements of this part.

[58 FR 12529, Mar. 4, 1993]

Section 440.25 Reports.

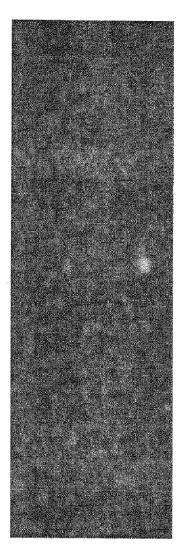
DOE may require any recipient of financial assistance under this part to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as DOE determines to be necessary to carry out its responsibilities or the responsibilities of the Secretary of Health and Human Services under this part.

(Approved by the Office of Management and Budget under control number 1901-0127)

Section 440.26-440.29 [Reserved]

Section 440.30 Administrative review.

- (a) An applicant shall have 20 days from the date of receipt of a decision under Section 440.12 or Section 440.13 to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision under Section 440.12 or Section 440.13 shall become final for DOE.
- (b) A notice requesting administrative review shall be filed with the Support Office Director and shall be accompanied by a written statement containing supporting arguments and requesting, if desired, the opportunity for a public hearing.
- (c) A notice or any other document shall be deemed filed under this section upon receipt.
- (d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Support Office Director shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under



Section 440.12 or Section 440.13 as to which administrative review is sought, a draft recommended final decision for the concurrence of the Deputy Assistant Secretary, and any other relevant material.

- (e) If the applicant requests a public hearing, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and FEDERAL REGISTER notice of the date, place, time nature.
- (f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Support Office Director.
- (g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.
- (h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.
- (i) Prior to the effective date of the termination of eligibility for further participation in the program because of failure to comply substantially with the requirements of the Act or of this part, a grantee shall have the right to written notice of the basis for the enforcement action and the opportunity for a public hearing notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. A notice under this paragraph shall be mailed by the Support Office Director by registered mail, return-receipt requested, to the State, local grantee, and other interested parties. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior FEDERAL REGISTER notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions of Rule 2 to the contrary.

[55 FR 41326, Oct. 10, 1990, as amended at 58 FR 12529, Mar. 4, 1993]

APPENDIX A TO PART 440 -- Standards for Weatherization Materials

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